

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
SIPAM CORPORATION	:	DETERMINATION
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Period December 1,	:	
1980 through May 31, 1984.	:	

Petitioner, Sipam Corporation, c/o Steven Sano, 101 Quintard Street, Staten Island, New York 10305, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1980 through May 31, 1984 (File No. 63747).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 24, 1986 at 9:00 A.M. Petitioner appeared by Steven M. Sano, Public Accountant. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner filed a petition for a hearing with the State Tax Commission within 90 days of the issuance of the Notice of Determination and Demand for Payment of Sales and Use Taxes Due.

FINDINGS OF FACT

1. On March 13, 1985, pursuant to a field audit, the Audit Division issued to Sipam Corporation a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$70,312.58, plus penalty and interest, for a total amount due of \$99,754.89 for the period December 1, 1980 through May 31, 1984.

2. On May 16, 1985, petitioner's representative, Steven M. Sano, filled out a TA-11 petition form and prepared a letter, bearing the same date, which he attached to the petition in

lieu of completing paragraph 4 of the petition. The letter was addressed to the State of New York, State Tax Commission, Tax Appeals Bureau, Albany, New York 12227. This letter set forth the grounds upon which relief was claimed and the facts relied upon in making this claim. Mr. Sano mailed the petition and attached letter by ordinary mail in the envelope which had been sent by the Department of Taxation and Finance to the petitioner along with the Notice of Determination and Demand for Payment of Sales and Use Taxes Due.

3. Mr. Sano stated that he did not recall the address on the envelope which he used to mail the petition. He also stated that he presumed that the envelope had been provided by the Department for purposes of submission of a petition for a redetermination.

4. Approximately two months after the mailing of the petition, petitioner received correspondence from the Tax Compliance Bureau of the Department which indicated that a judgment had been filed against Sipam Corporation. On July 22, 1985, Mr. Sano telephoned Carol Coleman at the Department's New York City office concerning the judgment. On July 29, 1985, he sent a letter to the said Carol Coleman. Enclosed in this letter was the information which he had received relative to the judgment. In the letter, Mr. Sano specifically requested that Carol Coleman look into the matter to try to ascertain why he had received no correspondence about the hearing which he had previously requested.

5. On August 14, 1985, Mr. Sano spoke, by telephone, to John Skorenski of the Tax Appeals Bureau and, on the following day, August 15, 1985, he sent a letter to the Tax Appeals Bureau, to the attention of John Skorenski, along with copies of the petition and letter dated May 16, 1985 and of the letter sent to Carol Coleman on July 29, 1985.

CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in pertinent part, that "[n]otice of such determination shall be given to the person liable for collection or payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the tax commission for a hearing...."

B. That the credible testimony of petitioner's representative, Steven M. Sano, taken together with telephone calls and letters to Carol Coleman at the Department of Taxation and Finance's New York City office and to John Skorenski of the Tax Appeals Bureau have established the diligence with which petitioner pursued its administrative remedy of a hearing for a revision of the Audit Division's determination that sales and/or use taxes were due and owing from petitioner for the period at issue. Petitioner's representative filed the petition with a detailed letter explaining the grounds upon which the claim for relief was based. Upon learning that the Tax Compliance Bureau was pursuing collection of the sales tax assessment against petitioner, Mr. Sano immediately contacted the Tax Compliance Bureau in New York City and the Tax Appeals Bureau in Albany for the purpose of determining why the Department was attempting collection prior to the holding of the administrative hearing for which he had previously petitioned. From the testimony offered at the hearing held herein and from the contents of the letter to Mr. Skorenski of the Tax Appeals Bureau, it is apparent that the petition was mistakenly mailed in an envelope addressed to the Tax Compliance Bureau, an envelope which petitioner's representative believed had been provided for the mailing of such a petition, but which had, in fact, been provided to the taxpayer for enclosure of payment of the assessment. The promptness and diligence of Mr. Sano's inquiries as to why collection was preceding an administrative hearing clearly indicate that petitioner's representative truly believed that he had fully complied with the provisions of section 1138(a)(1) of the Tax Law. His letter setting forth the grounds for relief was addressed to the Tax Appeals Bureau of the State Tax Commission, although the envelope containing the petition and letter apparently was not. Therefore, petitioner's timely mailing of its petition in the envelope sent to petitioner by the Department of Taxation and Finance along with the Notice of Determination and Demand for Payment of Sales and Use Taxes Due was in substantial compliance with the provisions of section 1138(a)(1) of the Tax

Law and, as such, petitioner must be provided with an administrative hearing on the substantive issues of the sales tax assessment issued against it.

C. That the petition of Sipam Corporation is deemed timely filed and the matter is to be returned to the Division of Tax Appeals for further proceedings not inconsistent herewith.

DATED: Albany, New York
September 18, 1987

ADMINISTRATIVE LAW JUDGE